March 15, 2018

Via Electronic Submission

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th St., SW, Room TW-A325
Washington, DC 20554

Re: Ex Parte Communication
Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79

Dear Ms. Dortch:

Sprint supports the Commission's efforts to eliminate burdensome and unnecessary review processes that are hindering the deployment of small cell technology that will enable better, faster, more reliable wireless service in a significantly less obtrusive manner. Sprint supports the straightforward definitions proposed by the Commission in its proposed order that would exclude small cells from the definition of an undertaking and major federal action and thus not be subject to the application of the National Historic Preservation Act ("NHPA") or the National Environmental Protection Act ("NEPA").

In an *ex parte* dated March 9, 2018, however, NCTA has proposed that the Commission adopt a much more extensive and complex definition of "facilities" and "wireless equipment" that has been used in the context of state laws establishing an administrative approval process for small cells. NCTA provides no public policy basis for its proposal other than a vague reference to "regulatory parity." Cable facilities, however, are not subject to NHPA and NEPA review. If parity is the goal, then wireless facilities should also be excluded. It is unclear why the cable industry would want to restrict the definition of small cells to undermine this goal.

NCTA begins with the puzzling suggestion that, when taken together, the components of a small cell actually exceed the size of a monopole or macrocell. NCTA provides no support for such an assertion, and it is plainly refuted by the record evidence in this proceeding. As has been described repeatedly, wireless carriers are deploying small cells precisely because they are substantially smaller than macrocells and can be deployed in a significantly less obtrusive manner.[1]

Based upon this faulty premise, NCTA then proposes that the definition of "facilities" and "wireless equipment" be modified to exclude "the structure or improvements on, under, within, or adjacent to the structure on which such equipment is collocated." As NCTA notes, this is language the cable industry has proposed for state legislation and is designed to describe what

[1] *See* Sprint Comments, WT Docket No. 17-79, at 12-13 (June 15, 2017) and Letter from Keith Buell to Marlene Dortch, WT Docket No. 17-79 (Feb. 21, 2018).

equipment can be placed in a public right of way as a "permitted use." In the context of rule 1.1312, however, this language is at best confusing and potentially harmful.

Unlike the affirmative definition of a permitted use, here the FCC is attempting to exclude small cells and the structures that satisfy the height restrictions upon which they are mounted[2] from the definition of a federal undertaking and major federal action under NHPA and NEPA. By creating an "exclusion to the exclusion" NCTA seems to suggest that poles used to support small cells *would* be subject to NEPA and NHPA review, thus undermining the purpose of this proceeding.

Likewise, NCTA seeks to exclude "above-ground or underground wire or coaxial or fiberoptic cable facilities used to transport communications data" or any other "wire or coaxial or fiberoptic cable that runs between wireless support structures." Cable providers and wireline telecommunications providers are not required to undergo NEPA or NHPA review. By creating this "exclusion to the exclusion" NCTA's proposed edits to the rule could be interpreted to require wireless providers to be subject to NEPA and NHPA review for facilities that would not otherwise be required to undergo such review. This effort to impose additional burdens on wireless carriers would defeat the Commission's goal of speeding small cell deployment and violate the cable industry's call for regulatory parity.

Almost all wireless signals eventually end up on a wired network to reach the wireless carrier's switch even though the connection from the handset to the tower is wireless. If wireless providers had to conduct costly NEPA and NHPA reviews when deploying their own backhaul but a cable operator could install a cable for backhaul without such reviews, the market would be skewed in favor of cable and away from wireless carriers deploying their own backhaul solutions.

NCTA is correct that wireless carriers, cable operators, and state legislators have agreed to small cell definitions that have specific volumetric limits and exclude backhaul cabling in the context of access to local rights-of-way and permitted use. These definitions, however, were crafted for a different purpose. In the state legislation, wireless carriers are seeking to access government-owned infrastructure at cost-based rates. In that situation, the cable operators have wanted to ensure that a wireless carrier providing backhaul would be subject to the same state right-of-way regulations as any other wireline provider. But those state and local regulations have nothing to do with the issues being considered in this proceeding—that is, federal reviews under NEPA and NHPA. Excluding wireline facilities from the exception in the proposed rule for small cell facilities creates unnecessary complexity and confusion by implying that NEPA and NHPA review would be required for backhaul facilities associated with small cells. There never has been such a requirement and any suggestion of such a requirement in the guise of regulatory parity should be rejected.

Pursuant to Section 1.1206 of the Commission's Rules, a copy of this letter is being filed electronically in the above-referenced docket. If you have any questions, please feel free to contact me at (703) 592-2560.

[2] See proposed rules § 1.1312(e)(2)(i).

Sincerely,

/s/ Keith C. Buell

Keith C. Buell
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